

48A C.J.S. Judges § 178

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

a. Authority to Make Decision on Evidence Heard by Predecessor

§ 178. Written memorandum or draft decision by predecessor

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Courts disagree as to whether a successor judge has the authority to render a judgment based on evidence heard by a predecessor judge where the predecessor has issued a written memorandum or draft decision but has failed to sign such memorandum or file it with the clerk.

It has been held that a successor judge has no authority to render a judgment based on evidence heard by a predecessor judge even though the predecessor has issued a written memorandum or draft decision where the predecessor has failed to sign such memorandum or file it with the clerk.¹ The rationale is that although a judge has drafted a preliminary decision and may have intended to take the final steps toward rendition of judgment, such as signing it and causing it to be typed or filed with the clerk, the judge's intention cannot be determined with certainty; judges, like all other human beings, sometimes change their minds after further reflection on the evidence or the legal precedents controlling the conclusions to be drawn from the evidence.²

Contrary authority holds that a successor judge may sign a judgment or an order which is prepared, but not yet signed or filed, by the judge to whom the matter has been originally submitted.³ More specifically, it has been held that there is no error in a successor judge's signing of formal findings and a judgment where the original judge had written and signed a lengthy, detailed memorandum opinion, as well as a supplemental memorandum opinion, which set forth findings of fact and conclusions of law in great detail and which, by themselves, would have been sufficient for deciding all the material issues in the case.⁴

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Footnotes

- 1 Conn.—[Stevens v. Hartford Acc. and Indem. Co.](#), 29 Conn. App. 378, 615 A.2d 507 (1992).
- Fla.—[Hartney v. Piedmont Technology, Inc.](#), 814 So. 2d 1217 (Fla. 1st DCA 2002).
- N.M.—[Pritchard v. Halliburton Services](#), 104 N.M. 102, 1986-NMCA-018, 717 P.2d 78 (Ct. App. 1986).
- Dictation to secretary**
A successor judge lacked authority to sign a proposed final judgment edited by the original trial judge and dictated to that judge's secretary where, without taking further action with respect to the proposed judgment, the trial judge was killed in an airplane accident.
- Fla.—[Carr v. Byers](#), 578 So. 2d 347 (Fla. 1st DCA 1991).
- 2 Conn.—[Stevens v. Hartford Acc. and Indem. Co.](#), 29 Conn. App. 378, 615 A.2d 507 (1992).
- 3 Iowa—[In re Marriage of Seyler](#), 559 N.W.2d 7, 84 A.L.R.5th 775 (Iowa 1997).
- 4 Utah—[Butler v. Wilkinson](#), 740 P.2d 1244 (Utah 1987).

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